



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/168007

PRELIMINARY RECITALS

Pursuant to a petition filed August 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on September 09, 2015, at Appleton, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's MA application due to assets exceeding the program limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney David Van Lieshout
P O Box 186
[REDACTED]-0186

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sheena Smith

Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. On February 28, 2015, the Petitioner began residing at a skilled nursing facility.

3. On March 6, 2015, an application for institutional MA was submitted on behalf of the Petitioner to the agency. Petitioner reported income from Social Security of \$1,113/month. Petitioner submitted a bank account statement indicating a bank account with a current balance of \$2,262.31 and available balance of \$1,979.75. Petitioner also had a resident trust account with a \$76.00 balance.
4. On April 22, 2015, the Petitioner gave a loan of \$21,000 each to her granddaughter and grandson.
5. On April 22, 2015, Petitioner's granddaughter and grandson executed promissory notes in which they agreed to pay the Petitioner the sum of \$21,000 with interest at the rate of 4% per annum in monthly installments of \$3,243.50 beginning May 1, 2015 and ending with the final payment on November 1, 2015. The notes state that they are "non-negotiable" and cannot be revoked by either party. They also cannot be cancelled or otherwise affected by the death of either party and may not be amended in any way. They are not assignable.
6. On July 8, 2015, the agency issued a Notice of Decision to the Petitioner's representative informing her that the application of the Petitioner for institutional MA was denied effective May 1, 2015 due to assets exceeding the program limit. It also informed her that the Petitioner's application for Medicare Premium Assistance was denied effective August 1, 2015 due to income and assets exceeding the program limit. The agency counted the principal amount of the loan repayments as available assets. The agency counted the interest payments of the loan as available income.
7. The Petitioner has burial assets that are exempt and were not counted by the agency in determining the Petitioner's eligibility.

DISCUSSION

A person is ineligible for institutional medical assistance if her assets exceed \$2,000. Wisconsin regulations hold that "only the assets actually available to that person shall be considered." Wis. Admin. Code, § DHS 103.06(1)(a); Wis. Stat. § 49.47(4)(b)3g.

In this case, the agency determined the Petitioner's assets exceed \$2,000. In making its determination, the agency counted the Petitioner's checking account with a balance of \$1,979.75, her resident trust account with a balance of \$76.00 and the amount of principal being repaid from monthly payments on each of the promissory notes issued to her grandchildren. The payments toward principal on each note were as follows:

May, 2015	\$3,222.79
June, 2015	\$3,183.11
July, 2015	\$3,195.52
August, 2015	\$3,204.78

Thus, the agency determined the Petitioner had total countable assets as follows:

May, 2015	\$8,501.33
June, 2015	\$8,421.97
July, 2015	\$8,421.97
August, 2015	\$8,465.31

The agency also asserts that it did not count the promissory note as an asset; rather, the agency notes that it followed MA Handbook policy provisions which require it to count the amount of principal in the note's monthly repayments as assets. In addition, the agency testified that it did not make a determination

with regard to a divestment because the Petitioner was determined to be over the asset limit and therefore, not otherwise eligible for MA.

The agency relies on the following MA Handbook provisions to support its determination:

15.4.8 Loans/Promissory Notes

If an AG [Assistance Group] member makes a loan or promissory note (except a land contract), treat the repayments as follows:

1. Count the interest as unearned income in the month received.
2. *Count any repayments toward the principal of the loan, whether it is a full payment, a partial payment, or an installment payment, as an asset.*
3. If an AG member receives a loan and it is available for current living expenses, count it as an asset. Do this even if there is a repayment agreement. If it is not available for current living expenses, disregard it.

16.7.2 Loans

If an AG member makes a loan (except a land contract), treat the repayments as follows:

1. *Count any repayments toward the principal of the loan, whether it is a full payment, a partial payment, or an installment payment, as an asset.*
2. Count any interest payment on the loan as unearned income in the month received, and as an asset in the months following the month it was received.

MA Handbook, §§ 15.4.8 and 16.7.2 (emphasis added).

The Petitioner argues that the promissory notes were incorrectly counted as assets by the agency. The Petitioner further asserts that a divestment determination should have been made when the application was filed on May 1, 2015. The Petitioner's representative asserts that Wis. Stat. §49.452, which requires the agency to count promissory notes executed after July 14, 2015 as assets, supports the argument that the agency should not have counted the promissory notes executed on April 22, 2015 in this case as assets. The Petitioner further asserts that the total amount of money available to the Petitioner each month is less than the cost of her care at the nursing facility and therefore she should be eligible for benefits.

Based on the evidence presented, I conclude that the agency properly denied the Petitioner's application for MA benefits due to assets exceeding the income limit. Per the handbook, the agency properly counted the amount of the monthly repayments representing principal as an asset. The agency did not count the promissory note itself as an asset.

With regard to a divestment determination, a divestment penalty period does not begin until an individual is otherwise eligible for MA benefits. Because the Petitioner was not otherwise eligible because she was over the asset limit on May 1, 2015, the agency was not required to determine if there is a divestment and a resulting penalty period. Even if the agency determined there was a divestment in this case, the penalty period would not begin until the Petitioner is otherwise eligible for MA, i.e. when she is under the asset limit. In this case, the Petitioner will not be under the asset limit until the expiration of the monthly payments on the promissory note.

With regard to the Petitioner's cost of care exceeding her income, there is no basis for such to be considered in determining eligibility except possibly when a hardship waiver is at issue. In this case, there has been no evidence that a hardship waiver was requested.

Based on the evidence, I conclude the agency properly denied the Petitioner's MA application dated May 1, 2015 due to assets exceeding the program limit.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's MA application due to assets exceeding the program limit.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

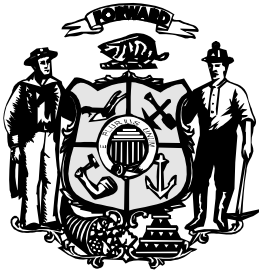
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of November, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 5, 2015.

Outagamie County Department of Human Services
Division of Health Care Access and Accountability
Attorney David Van Lieshout